

# HOUSE BILL 352

N1

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By: **Delegates Holmes and Weir**

Introduced and read first time: January 30, 2012

Assigned to: Environmental Matters

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## A BILL ENTITLED

1 AN ACT concerning

2 **Common Interest Communities – Management Services – Required Contract**

3 FOR the purpose of requiring a service provider that assists in providing certain  
4 management services for a common interest community under the direction of  
5 the governing body to enter into a written contract with the governing body of  
6 the common interest community in order to provide the management services;  
7 establishing the right of a common interest community to terminate a certain  
8 service without penalty if the service was not provided under a written contract;  
9 establishing the right to terminate a certain written contract for cause;  
10 prohibiting certain provisions in a certain written contract; requiring a service  
11 provider to provide a common interest community with evidence that the service  
12 provider carries certain insurance coverage before entering into a certain  
13 written contract; requiring a written contract to provide certain legal defense to  
14 a service provider under certain conditions; requiring a written contract that  
15 includes accounting or debt collection services to include certain provisions;  
16 requiring a certain written contract to make certain provisions regarding  
17 certain records and documents of the common interest community; defining  
18 certain terms; providing for a delayed effective date; and generally relating to  
19 the requirement of a written contract for the provision of management services  
20 to a common interest community.

21 BY adding to

22 Article – Real Property

23 Section 14–133

24 Annotated Code of Maryland

25 (2010 Replacement Volume and 2011 Supplement)

26 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
27 MARYLAND, That the Laws of Maryland read as follows:

28 **Article – Real Property**

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 14-133.

2 (A) (1) IN THIS SECTION THE FOLLOWING TERMS HAVE THE  
3 MEANINGS INDICATED.

4 (2) "COMMON INTEREST COMMUNITY" MEANS:

5 (I) A CONDOMINIUM COUNCIL OF UNIT OWNERS  
6 ORGANIZED UNDER TITLE 11 OF THIS ARTICLE;

7 (II) A HOMEOWNERS ASSOCIATION ORGANIZED UNDER  
8 TITLE 11B OF THIS ARTICLE; OR

9 (III) A COOPERATIVE HOUSING CORPORATION ORGANIZED  
10 UNDER TITLE 5, SUBTITLE 6B OF THE CORPORATIONS AND ASSOCIATIONS  
11 ARTICLE.

12 (3) "GOVERNING BODY" MEANS:

13 (I) THE BOARD OF DIRECTORS OF A CONDOMINIUM  
14 COUNCIL OF UNIT OWNERS ORGANIZED UNDER TITLE 11 OF THIS ARTICLE;

15 (II) THE BOARD OF DIRECTORS OR OTHER GOVERNING  
16 BODY OF A HOMEOWNERS ASSOCIATION ORGANIZED UNDER TITLE 11B OF THIS  
17 ARTICLE; OR

18 (III) THE BOARD OF DIRECTORS OF A COOPERATIVE  
19 HOUSING CORPORATION ORGANIZED UNDER TITLE 5, SUBTITLE 6B OF THE  
20 CORPORATIONS AND ASSOCIATIONS ARTICLE.

21 (4) (I) "MANAGEMENT SERVICES" MEANS THE MANAGING OF  
22 THE COMMON PROPERTY AND SERVICES OF A COMMON INTEREST COMMUNITY  
23 PERFORMED BY THE GOVERNING BODY IN ITS BUSINESS, LEGAL, FINANCIAL, OR  
24 OTHER TRANSACTIONS WITH MEMBERS OF THE COMMON INTEREST COMMUNITY  
25 AND NONMEMBERS FOR A FEE, COMMISSION, OR OTHER VALUABLE  
26 CONSIDERATION.

27 (II) "MANAGEMENT SERVICES" INCLUDES:

28 1. COLLECTING MONTHLY ASSESSMENTS;

29 2. PREPARING BUDGETS, FINANCIAL STATEMENTS,  
30 OR OTHER FINANCIAL REPORTS;

1                   **3. NEGOTIATING CONTRACTS OR OTHERWISE**  
2 **COORDINATING OR ARRANGING FOR SERVICES OR THE PURCHASE OF**  
3 **PROPERTY OR GOODS FOR OR ON BEHALF OF A COMMON INTEREST**  
4 **COMMUNITY;**

5                   **4. EXECUTING THE RESOLUTIONS AND DECISIONS**  
6 **OF A GOVERNING BODY AND COMMON INTEREST COMMUNITY IN COMPLIANCE**  
7 **WITH LAWS, CONTRACTS, COVENANTS, RULES, AND BYLAWS;**

8                   **5. MANAGING THE OPERATION AND MAINTENANCE**  
9 **OF PROPERTY OWNED BY A COMMON INTEREST COMMUNITY, INCLUDING A**  
10 **COMMUNITY CENTER, POOL, GOLF COURSE, AND PARKING AREA; AND**

11                   **6. ARRANGING, CONDUCTING, OR COORDINATING**  
12 **MEETINGS OF A COMMON INTEREST COMMUNITY.**

13                   **(5) (I) “SERVICE PROVIDER” MEANS A BUSINESS ENTITY THAT**  
14 **ASSISTS THE GOVERNING BODY IN PROVIDING MANAGEMENT SERVICES TO A**  
15 **COMMON INTEREST COMMUNITY BY PROVIDING ADMINISTRATIVE, CONTRACT**  
16 **MANAGEMENT, AND OTHER SERVICES UNDER THE DIRECTION OF THE**  
17 **GOVERNING BODY FOR A FEE, COMMISSION, OR OTHER VALUABLE**  
18 **CONSIDERATION.**

19                   **(II) “SERVICE PROVIDER” INCLUDES A SOLE**  
20 **PROPRIETORSHIP.**

21                   **(B) (1) A SERVICE PROVIDER THAT ASSISTS IN PROVIDING**  
22 **MANAGEMENT SERVICES TO A COMMON INTEREST COMMUNITY UNDER THE**  
23 **DIRECTION OF THE GOVERNING BODY, INCLUDING ASSISTING IN CONTRACTING**  
24 **WITH OTHERS TO PERFORM WORK ASSOCIATED WITH MANAGEMENT SERVICES,**  
25 **IS REQUIRED TO ENTER INTO A WRITTEN CONTRACT WITH THE COMMON**  
26 **INTEREST COMMUNITY BEFORE PROVIDING THE SERVICES.**

27                   **(2) THE WRITTEN CONTRACT SHALL BE MADE IN THE NAME OF**  
28 **THE COMMON INTEREST COMMUNITY AND EXECUTED BY ONE OR MORE**  
29 **MEMBERS OF THE GOVERNING BODY.**

30                   **(3) IF THE SERVICE PROVIDER FAILS TO COMPLY WITH**  
31 **PARAGRAPH (1) OF THIS SUBSECTION, THE COMMON INTEREST COMMUNITY**  
32 **MAY TERMINATE THE SERVICE WITHOUT PENALTY OR OBLIGATION WITH 10**  
33 **DAYS’ WRITTEN NOTICE.**

34                   **(C) (1) IN THIS SUBSECTION, “CAUSE” MEANS THAT:**

1                   **(I) EITHER PARTY DOES NOT MAINTAIN INSURANCE**  
2 **COVERAGE AS REQUIRED BY SUBSECTION (F) OF THIS SECTION OR ALLOWS THE**  
3 **INSURANCE COVERAGE TO LAPSE;**

4                   **(II) EITHER PARTY FAILS TO COMPLY WITH OR IS IN**  
5 **VIOLATION OF A PROVISION OF THE U.S. CONSTITUTION OR MARYLAND**  
6 **CONSTITUTION, FEDERAL OR STATE LAW OR REGULATION, OR A LOCAL**  
7 **ORDINANCE OR LAW; OR**

8                   **(III) A COURT FINDS EITHER PARTY HAS COMMITTED A**  
9 **MATERIAL BREACH OF THE CONTRACT.**

10                   **(2) EITHER PARTY TO THE WRITTEN CONTRACT MAY TERMINATE**  
11 **THE CONTRACT AT ANY TIME FOR CAUSE WITH 30 DAYS' WRITTEN NOTICE.**

12                   **(3) EITHER PARTY MAY TERMINATE THE WRITTEN CONTRACT**  
13 **DURING THE TERM OF THE CONTRACT WITH 60 DAYS' WRITTEN NOTICE.**

14                   **(D) THE CONTRACT MAY NOT:**

15                   **(1) WAIVE ANY RIGHT OR REMEDY PROVIDED BY LAW;**

16                   **(2) PROVIDE AUTHORITY TO THE SERVICE PROVIDER TO**  
17 **PERFORM A MANAGEMENT SERVICE UNLESS DIRECTED AND AUTHORIZED BY**  
18 **THE GOVERNING BODY;**

19                   **(3) (I) REQUIRE THE COMMON INTEREST COMMUNITY TO PAY**  
20 **A LATE PAYMENT FEE TO THE SERVICE PROVIDER IN EXCESS OF 10% OF THE**  
21 **AMOUNT DUE; OR**

22                   **(II) REQUIRE THE COMMON INTEREST COMMUNITY TO PAY**  
23 **A LATE PAYMENT FEE TO THE SERVICE PROVIDER UNTIL AT LEAST 15 DAYS**  
24 **AFTER THE PAYMENT IS DUE; OR**

25                   **(4) AUTHORIZE THE SERVICE PROVIDER TO TAKE POSSESSION**  
26 **OF ANY COMMON INTEREST COMMUNITY PROPERTY WITHOUT THE USE OF**  
27 **FORMAL LEGAL PROCESS.**

28                   **(E) THE WRITTEN CONTRACT MAY NOT CONTAIN AN AUTOMATIC**  
29 **RENEWAL PROVISION OF MORE THAN 1 MONTH UNLESS:**

1           **(1) THE AUTOMATIC RENEWAL PROVISION IS DISTINCTLY AND**  
2 **PROMINENTLY SET APART IN THE CONTRACT; AND**

3           **(2) A MEMBER OF THE GOVERNING BODY INITIALS THE**  
4 **PROVISION TO INDICATE AGREEMENT OF THE COMMON INTEREST COMMUNITY.**

5           **(F) BEFORE ENTERING INTO A WRITTEN CONTRACT UNDER THIS**  
6 **SECTION, A SERVICE PROVIDER SHALL PROVIDE THE COMMON INTEREST**  
7 **COMMUNITY WITH EVIDENCE THAT THE SERVICE PROVIDER HAS IN PLACE:**

8           **(1) A COMMERCIAL PROPERTY AND LIABILITY INSURANCE**  
9 **POLICY WITH A MINIMUM OF \$1,000,000 COVERAGE;**

10           **(2) A WORKERS' COMPENSATION POLICY WITH A MINIMUM OF**  
11 **\$500,000 COVERAGE; AND**

12           **(3) FIDELITY INSURANCE THAT INSURES FOR THE LOSS OF**  
13 **COMMON INTEREST COMMUNITY FUNDS AGAINST DISHONESTY, FRAUD, AND**  
14 **THEFT BY THE SERVICE PROVIDER IN PROVIDING FINANCIAL ACCOUNTING**  
15 **SERVICES THAT IS EQUAL TO 10% OF ALL FUNDS UNDER THE SERVICE**  
16 **PROVIDER'S DIRECT CUSTODY AND CONTROL WITH A MINIMUM OF \$300,000**  
17 **COVERAGE AND NOT EXCEEDING \$2,000,000 COVERAGE.**

18           **(G) A WRITTEN CONTRACT SHALL CONTAIN A PROVISION THAT THE**  
19 **COMMON INTEREST COMMUNITY WILL NAME THE SERVICE PROVIDER AS A**  
20 **NAMED INSURED UNDER ANY POLICY MAINTAINED BY THE COMMON INTEREST**  
21 **COMMUNITY AND WILL DEFEND THE SERVICE PROVIDER IN ANY CLAIM AGAINST**  
22 **THE COMMON INTEREST COMMUNITY OR THE SERVICE PROVIDER AS LONG AS:**

23           **(1) THE SERVICE PROVIDER ACTED UNDER THE EXPRESS OR**  
24 **IMPLIED AUTHORITY OF THE GOVERNING BODY; AND**

25           **(2) THE SERVICE PROVIDER DID NOT ACT WITH WILLFUL OR**  
26 **GROSS NEGLIGENCE.**

27           **(H) (1) A WRITTEN CONTRACT THAT INCLUDES ACCOUNTING OR**  
28 **DEBT COLLECTION SERVICES SHALL PROVIDE THAT FUNDS RECEIVED BY THE**  
29 **SERVICE PROVIDER:**

30           **(I) BE PLACED IN AN ACCOUNT IDENTIFIED AS AN**  
31 **ACCOUNT OF THE COMMON INTEREST COMMUNITY BY NAME AND FEDERAL**  
32 **IDENTIFICATION NUMBER; AND**

1                   **(II) MAY NOT BE COMMINGLED WITH FUNDS OF THE**  
2 **SERVICE PROVIDER.**

3                   **(2) (I) A WRITTEN CONTRACT THAT INCLUDES ACCOUNTING**  
4 **SERVICES SHALL PROVIDE THAT THE SERVICE PROVIDER SHALL ISSUE A**  
5 **WRITTEN REPORT TO THE GOVERNING BODY OF ALL ACCOUNTING ACTIVITY**  
6 **WITHIN 30 DAYS FOLLOWING THE END OF A MONTH.**

7                   **(II) THE REPORT MAY BE PROVIDED ELECTRONICALLY AND**  
8 **SHALL INCLUDE:**

9                               **1. A LIST OF ALL FINANCIAL TRANSACTIONS;**

10                              **2. A REPORT OF ALL UNIT OWNER OR HOMEOWNER**  
11 **PAYMENTS AND ACCOUNT BALANCES;**

12                              **3. ALL PAID AND UNPAID INVOICES;**

13                              **4. A BALANCE SHEET; AND**

14                              **5. A COMPARISON OF THE MONTH AND YEAR TO**  
15 **DATE ACTUAL INCOME AND EXPENSES WITH THE COMMON INTEREST**  
16 **COMMUNITY'S BUDGET.**

17                   **(3) A WRITTEN CONTRACT ENTERED INTO UNDER THIS**  
18 **SUBSECTION SHALL CONTAIN A PROVISION THAT ALL FUNDS BELONGING TO**  
19 **THE COMMON INTEREST COMMUNITY SHALL BE RETURNED TO THE COMMON**  
20 **INTEREST COMMUNITY WITHIN 15 DAYS FOLLOWING THE FINAL REPORT OF**  
21 **MONTHLY ACCOUNTING SERVICES OR WITHIN 30 DAYS OF THE TERMINATION OF**  
22 **DEBT COLLECTION SERVICES.**

23                   **(I) THE WRITTEN CONTRACT SHALL PROVIDE THAT ALL RECORDS AND**  
24 **DOCUMENTS OF THE COMMON INTEREST COMMUNITY THAT RELATE TO THE**  
25 **WORK OF THE SERVICE PROVIDER:**

26                              **(1) REMAIN THE PROPERTY OF THE COMMON INTEREST**  
27 **COMMUNITY;**

28                              **(2) MAY BE HELD BY THE SERVICE PROVIDER DURING THE**  
29 **NORMAL COURSE OF BUSINESS;**

1           **(3) SHALL BE MADE AVAILABLE FOR INSPECTION BY THE**  
2 **COMMON INTEREST COMMUNITY DURING THE TERM OF THE CONTRACT DURING**  
3 **THE SERVICE PROVIDER'S NORMAL BUSINESS HOURS; AND**

4           **(4) SHALL BE RETURNED TO THE COMMON INTEREST**  
5 **COMMUNITY WITHIN 30 DAYS OF THE TERMINATION OF THE CONTRACT.**

6           **(J) A WRITTEN CONTRACT CONTAINING A PROVISION PROHIBITED BY**  
7 **THIS SECTION MAY NOT BE ENFORCED.**

8           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
9 January 1, 2013.